

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

UNITED STATES OF AMERICA

v.

KOLON INDUSTRIES, INC.,

Including and through its successors
“Kolon Industries, Inc.” and “Kolon
Corporation”

JONG-HYUN CHOI,

IN-SIK HAN,

JU-WAN KIM,

KYEONG-HWAN RHO,

YOUNG-SOO SEO,

Defendants.

Case No. 3:12-cr-137-AJT

**MEMORANDUM OF LAW IN SUPPORT OF KOLON’S MOTION FOR LEAVE TO
APPEAR SPECIALLY**

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I. INTRODUCTION

By this motion (“Motion”), counsel for Kolon¹ respectfully requests leave of the Court to appear specially for the limited purpose of filing a motion requesting a brief continuance of the arraignment, currently scheduled for February 19, 2015, in order to allow the United States Court of Appeals for the Fourth Circuit sufficient time to act upon Kolon’s petition for writ of mandamus addressing Kolon’s jurisdiction challenges in this case.² If Kolon’s request to appear specially is granted, Kolon will promptly file its Motion to Continue the Arraignment Date, attached hereto as Exhibit A.

II. PROCEDURAL DEVELOPMENTS

On December 23, 2014, the Court denied Kolon’s Motion to Quash and set the arraignment for January 6, 2015. D.I. 173. The next day, on December 24, 2014, Kolon appeared specially to file its unopposed motion asking the Court to continue the arraignment date while Kolon sought a writ of mandamus from the Fourth Circuit. D.I. 174. The Government filed a response, but did not oppose a brief continuance in order to provide sufficient time for the Fourth Circuit to “dispose of [Kolon’s] petition.” D.I. 175 at 4. The Court granted Kolon’s motion on December 29, 2014, ordering arraignment to be continued to February 19, 2015. D.I. 177.

Kolon filed its petition for a writ of mandamus to the Fourth Circuit on December 30, 2014, requesting immediate relief from this Court’s December 23, 2014 decision. *See In re*

¹ “Kolon” refers to Kolon Industries, Inc., Kolon Corporation and any Kolon entity that the Government contends is both a party and the subject of the Government’s service efforts in the above-captioned action. The Superseding Indictment is fatally ambiguous as to the named defendant(s).

² Kolon continues to contend that service was not proper and that, until the Government properly effects service, this Court does not have jurisdiction over Kolon. To preserve its jurisdictional arguments, Kolon’s appearance and submission will be limited to issues pertaining to the Court’s jurisdiction over Kolon.

Kolon Industries, Inc., No. 14-2417 (4th Cir.), Doc. 2-1. On January 8, 2015, the Fourth Circuit ordered the Government to file a response to Kolon's petition. Doc. 13. The Government filed its response on January 20, 2015, and stated therein that the arraignment date had been set for February 19, 2015. Doc. 15-1. On January 26, 2015, Kolon requested leave to file a reply brief, and provided its reply with its request for leave. Doc. 18-1, 18-2. The Government opposed Kolon's motion for leave to file a reply on January 27, 2015, and repeated that arraignment was set for February 19, 2015. Doc. 19.

As of the date of this filing, the Fourth Circuit has not ruled on Kolon's motion requesting leave to file a reply, and has not taken action on Kolon's petition for a writ of mandamus.

III. ARGUMENT

To preserve its jurisdictional challenges to this Court's jurisdiction, Kolon respectfully requests that the Court grant it leave to appear specially in order to file a motion requesting a brief continuance of the arraignment to allow the Fourth Circuit to rule on Kolon's petition for a writ of mandamus, which relates to Kolon's jurisdictional challenge. The Fourth Circuit quickly sought a response by the Government to Kolon's petition and is now considering the issues based on briefs from both parties addressing the jurisdictional issues.

The Court has repeatedly granted leave for Kolon's counsel to appear specially to challenge the Government's attempted service of process and the Court's personal jurisdiction. See D.I. 20, 65, 105, 141, 159, 165. For similar reasons, the Court can and should enter an order authorizing Kolon to appear specially for the limited purpose of filing the motion attached as Exhibit A.

Courts have broad discretion to allow special appearances. *See, e.g., United States v. Swank Corp.*, 797 F. Supp. 497, 499 (E.D. Va. 1992) (noting that earlier order had granted leave

to make special appearance to permit the release of assets to retain counsel); *Boyle v. United States*, 101 F. 3d 7-2 (6th Cir. 1996) (withdrawal from criminal case was proper where attorney had previously notified defendant that she would enter a limited appearance because defendant could not pay her fee); *see also Prudential Ins. Co. v. McKee*, 81 F.2d 508, 511 (4th Cir. 1936) (noting that “the right to specially appear in the federal court is substantial”).

Where, as here, defense counsel seeks leave to raise issues related to a lack of personal jurisdiction, such leave is routinely granted. *See, e.g., United States v. Dotcom*, No. 12-cr-00003 (E.D. Va. Oct. 5, 2012), D.I. 127 (granting foreign defendant leave to enter limited appearance to move to dismiss indictment for lack of personal jurisdiction); *United States v. Noriega*, 683 F. Supp. 1373, 1374 (S.D. Fla. 1988) (granting foreign defendant’s motion to make a special appearance to contest the court’s jurisdiction and attack sufficiency of the indictment). In light of the Court’s previous orders allowing Kolon to appear to contest service, Kolon respectfully requests a similar order here.

IV. CONCLUSION

For the foregoing reasons, Kolon respectfully requests leave to enter a special appearance for the limited purpose of filing the attached motion and requesting a continuance of the arraignment pending the Fourth Circuit’s action on Kolon’s petition for writ of mandamus.

Respectfully submitted this 10th day of February, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2015, I electronically filed the foregoing document, entitled Memorandum of Law in Support of Kolon's Motion for Leave to Appear Specially, with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel named below:

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